

## OPT OUT AND REGISTRATION NOTICE

### FEDERAL COURT OF AUSTRALIA

*NAB Credit Insurance Class Action (VID1238/2018)*

#### **THIS NOTICE IS IMPORTANT**

##### **PLEASE READ IT CAREFULLY, AS IT MAY AFFECT YOUR LEGAL RIGHTS**

- You are receiving this notice because you were sold NAB credit card insurance and/or NAB personal loan insurance, and so may be a member of the NAB Credit Insurance Class Action.
- The class action is being conducted on a ‘no win, no fee’ basis and you will never be required to pay anything ‘out of pocket’ to be part of the class action.
- If you are an eligible class member and wish to register to receive compensation in the event of a successful outcome, please enter your details at this link:  
<https://www.slatergordon.com.au/class-actions/current-class-actions/consumer-credit-insurance>
- If you are an eligible class member but wish to be excluded from the class action, you may opt out by completing the attached form and sending it to the Federal Court. If you do so you will not be eligible to benefit from any compensation in the event of a successful outcome.

#### **SECTION A**

##### **1. WHY IS THIS NOTICE IMPORTANT?**

A class action has been commenced in the Federal Court of Australia against National Australia Bank (**NAB**) and MLC Limited (**MLC**), in relation to two types of insurance policies sold to customers of NAB: namely, NAB Credit Card Cover and NAB Personal Loan Cover. The action is based upon allegations that NAB and MLC have engaged in unconscionable conduct by selling this insurance to customers in circumstances where the insurance was of no or little value to and was not suited to the needs of the customers it was sold to. It is also alleged that the insurance was sold to some customers who were not informed that the insurance was optional.

With respect to the NAB Credit Card Cover, it is also alleged that the insurance was sold to some customers without seeking the customer’s consent to the purchase, and/or without fully or properly explaining to the customer the exclusions under the cover applicable to them or the costs of the cover. Further, it is alleged that NAB engaged in misleading and deceptive conduct in the sale of NAB Credit Card Cover to customers in this manner.

The Federal Court has ordered that this notice (**Notice**) be published for the information of persons who might be members of the class on whose behalf the action is brought and who may be affected by the action (**Class Members**).

**If you have held the insurance “NAB Credit Card Cover” at any time since 27 September 2012, or “NAB Personal Loan Cover” at any time since 14 June 2013, or have paid**

**premiums since those dates, you may be a Class Member and you should read this Notice carefully.**

Any questions you have concerning the matters contained in this Notice should not be directed to the Court. If there is anything in it that you do not understand, you should access the additional information at <https://www.slatergordon.com.au/class-actions/current-class-actions/consumer-credit-insurance> or you may seek your own legal advice.

## **2. WHAT IS A CLASS ACTION?**

A class action is a legal proceeding brought by a person (**Applicant**) on their own behalf, and on behalf of a number of persons (referred to as **Class Members**), who have similar claims against the same Respondent(s).

The Applicant in a class action does not need to seek the consent of Class Members to commence a class action on their behalf, however, Class Members can cease to be Class Members by opting out of the class action by the deadline if they do not wish to participate. An explanation of how Class Members are able to opt out of the NAB Credit Insurance Class Action is set out in Section B below.

This means that:

- (a) if the class action is successful, Class Members may be eligible for their share of any compensation or Court-awarded damages;
- (b) if the class action is unsuccessful, Class Members are bound by that result; and
- (c) regardless of the outcome of the class action, Class Members will not be able to pursue their claim against the Respondent(s) in separate legal proceedings unless they have opted out.

## **3. WHAT IS THE NAB CREDIT INSURANCE CLASS ACTION?**

The NAB Credit Insurance Class Action was commenced on 27 September 2018 against NAB and MLC by the Applicant, and is being conducted by Slater and Gordon. The Class Action is based upon the allegations against NAB and MLC set out in Part 1 of this Notice, above.

The Applicant brings the class action on her own behalf and on behalf of all persons who are Class Members as defined in the proceeding. The definition of Class Member in the NAB Credit Insurance Class Action is set out at heading 4, below.

The Respondents deny the allegations and are defending the claims.

## **4. ARE YOU A CLASS MEMBER?**

You are a Class Member in the NAB Credit Insurance Credit Insurance Class Action if you:

- a. at any time were issued a credit insurance policy with MLC, in relation to:
  - i. a credit card issued by NAB; and/or
  - ii. a personal loan entered into by the relevant Group Member with NAB; and
- b. have paid premiums under that policy (or policies) at any time since:
  - i. for policies related to credit cards, 26 September 2012; and
  - ii. for policies related to personal loans, 14 June 2013,  
**(the Relevant Period)**; and

- c. at the time when the policy was issued and/or at the time when the credit card was issued or the personal loan was advanced, satisfied one or more of the following paragraphs:
  - i. were not 'gainfully employed' (as defined in the terms and conditions of the policy, referred to below);
  - ii. were employed on a fixed or short-term contract, including seasonal work, with an employer or agency, including as a casual worker;
  - iii. were employed by their family, or their company or their business;
  - iv. had a 'critical illness' (as defined in the terms and conditions of the policy, referred to below);
  - v. were under the age of 25 years;
  - vi. were not an Australian resident, and were:
    - A. issued with a credit card;
    - B. advanced a personal loan on or after 3 August 2015;
- ca. further to (c), as a result of the conduct engaged in by or on behalf of NAB and MLC, satisfied one or more of the following paragraphs, whether or not they also satisfied one or more of the subparagraphs to paragraph (c) above:
  - i. did not appreciate they had purchased the policy;
  - ii. believed that they were required to take out the policy, in order to have the credit card issued to them or the personal loan advanced to them;
  - iii. believed that there would be no cost, or would likely be no cost, to them in purchasing the policy, when that was not the case; or
  - iv. believed that the policy was suited to their needs, and/or represented value for money, when that was not the case.
- d. Are not:
  - i. a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of NAB or MLC; or
  - ii. a related body corporate (as defined by s 50 of the Corporations Act) of NAB or MLC; or
  - iii. an associated entity (as defined by s 50AAA of the Corporations Act) of NAB or MLC; or
  - iv. an officer of a close associate (as defined by s 9 of the Corporations Act) of NAB or MLC; or
  - v. a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or this Court.

We note that the Respondents raise a limitation of actions defence for persons who entered into policies prior to 26 September 2012 with respect to NAB Credit Card Cover and 14 June 2013 for NAB Personal Loan Cover respectively. If you are unsure whether or not you are a Class Member, you should access the additional information at <https://www.slatergordon.com.au/class-actions/current-class-actions/consumer-credit-insurance> or you may seek your own legal advice without delay.

## **SECTION B**

If you are a Class Member, you have three options:

### **Option 1 – Register**

In which case, if you are an eligible class member, you will have registered your interest in receiving compensation in the event of a successful outcome and you will receive regular updates regarding the proceeding.

### **Option 2 – Opt out of the NAB Credit Insurance Class Action**

In which case you will cease to be a Class Member of the NAB Credit Insurance Class Action and will not be entitled to participate in any court-ordered compensation in favour of class members or any settlement that might be agreed. If you wish to opt out, you should seek legal advice before you do so.

### **Option 3 – Do nothing**

In which case you will remain a Class Member of the NAB Credit Insurance Class Action but will not be registered. Your claims will still be collectively resolved through the class action and you will remain entitled to participate in any court-ordered damages award in favour of class members or any settlement that might be agreed.

## **5. OPTION 1 – REGISTER**

If you are an eligible class member and would like to register to receive compensation in the event of a successful outcome and receive regular updates regarding the progress of the NAB Credit Insurance Class Action, you can do so at <https://www.slatergordon.com.au/class-actions/current-class-actions/consumer-credit-insurance>.

By doing so, you may be affected by the outcome of the proceeding in the ways described in section 2 above.

## **6. OPTION 2 – OPT OUT OF THE CLASS ACTION**

If you do not wish to remain a NAB Credit Insurance Class Action Class Member, you must opt out of the class action by completing the “Opt Out Notice” form annexed to this Notice at Schedule A. If you wish to opt out, you should seek legal advice before you do so.

If you opt out of the NAB Credit Insurance Class Action, you will:

- (a) not be affected by any orders made in the NAB Credit Insurance Class Action;
- (b) not be permitted to participate in the distribution of any damages award or settlement outcome in the NAB Credit Insurance Class Action; and
- (c) be entitled to commence separate legal proceedings in relation to the matters the subject of the NAB Credit Insurance Class Action on your own behalf if you so wish, provided that you issue Court action within the time limit applicable to your claim.

If you wish to bring your own separate claim against NAB and/or MLC, you should seek your own legal advice about your claim and the applicable time limit prior to opting out.

Completed Opt Out Notices must be delivered to the Victorian District Registry of the Federal Court of Australia (Level 7, Commonwealth Law Courts, 305 William Street, Melbourne) on or before **4:00pm on 30 August 2019**. Any Opt Out Notices received after this time will be out of time and, subject to further order, you will be treated as having not responded to this Notice and you will remain as a NAB Credit Insurance Class Action Class Member.

## **7. OPTION 3 – DO NOTHING – REMAIN A CLASS MEMBER**

If you do not wish to register but wish to remain a Class Member there is **nothing you need to do** at the present time.

## **8. WHAT WILL HAPPEN IF YOU CHOOSE TO REMAIN A CLASS MEMBER**

Unless you opt out, you will be bound by any settlement or judgment of the NAB Credit Insurance Class Action. If the class action is successful you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and class members, although you may have to satisfy certain conditions before your entitlement arises. If the action is unsuccessful or is not as successful as you might have wished, you will not be able pursue the same claims and may not be able to pursue related claims against NAB and MLC in other legal proceedings.

## **9. WILL YOU BE LIABLE FOR LEGAL COSTS IF YOU REMAIN A CLASS MEMBER?**

You will **not become liable for any legal costs** simply by remaining as a class member. Class Members in a class action are not individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant is responsible for legal costs.

However, if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can contact the Applicant's lawyers or other lawyers to discuss whether they can do that work for you. In the majority of class actions, group members are able to participate without engaging their own solicitors. The Applicant has retained Slater and Gordon to act as her lawyer pursuant to a Conditional Legal Costs Agreement.

If any compensation becomes payable to you as a result of any order, judgment, or settlement in the NAB Credit Insurance Class Action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicant in running the class action but which are not able to be recovered from NAB and MLC.

In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party (known as an "adverse costs order"). In a class action, it is only the Applicant who faces the risk of an adverse costs order if the action fails. As a NAB Credit Insurance Class Action Class Member, an adverse costs order will not be made against you.

The Applicant may seek to obtain adverse costs insurance to protect against that risk. If she does, the cost of that insurance will form part of the costs for which reimbursement is sought in the event of a successful outcome.

Further information about the Applicant's costs agreement can be obtained at <https://www.slatergordon.com.au/class-actions/current-class-actions/consumer-credit-insurance>.

## **10. WHERE CAN YOU OBTAIN COPIES OF RELEVANT DOCUMENTS?**

Copies of relevant documents, including the originating application, the statement of claim, and the defences, may be obtained by:

- (a) visiting <https://www.slatergordon.com.au/class-actions/current-class-actions/consumer-credit-insurance> ;

- (b) inspecting them between 9am and 5pm at one of the offices of Slater and Gordon, contact details for which are available from Slater and Gordon's website; or
- (c) by contacting a District Registry of the Federal Court (contact details are available [www.fedcourt.gov.au](http://www.fedcourt.gov.au)) and paying the appropriate inspection fee.

Please consider the above matters carefully. If there is anything of which you are unsure, you should access the additional information found at <https://www.slatergordon.com.au/class-actions/current-class-actions/consumer-credit-insurance>, or seek your own legal advice. You should not delay in making your decision.

## SCHEDULE A

Form 21 Rule 9.34

### OPT OUT NOTICE

**IMPORTANT:** You should only complete this form if you do NOT want to participate in the NAB Credit Insurance Class Action

VID 1238 of 2018

Federal Court of Australia

District Registry: Victoria

Division: Commercial and Corporations NPA

Regulator and Consumer Protection Sub-area

**Samantha Clark**

Applicant

**National Australia Bank Limited 004 044 937 and another named in the Schedule**  
Respondents

To: The Registrar  
Federal Court of Australia, Victoria District Registry  
Owen Dixon Commonwealth Law Courts Building  
305 William Street, Melbourne VIC 3000

.....(print name of class member), a class member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that they are opting out of the class action.

Date: .....

Signed by: .....

Class Member/Lawyer for the Class Member (*circle as applicable*)

*Please complete the information on the following page*

#### Class member details

Telephone: .....

Email: .....

Address: .....

If you are signing as the solicitor or representative of the class member:

Name: .....

Capacity: .....

Telephone: .....

Email: .....

Address: .....